

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2002-252-C - ORDER NO. 2003-145

MARCH 17, 2003

IN RE: Application of Cypress Communications)	ORDER GRANTING
Operating Company, Inc. for a Certificate of)	CERTIFICATE FOR
Public Convenience and Necessity to Operate)	INTEREXCHANGE
as a Reseller of Intrastate Interexchange)	AUTHORITY AND
Telecommunications Services and for)	MODIFIED
Alternative Regulation.)	ALTERNATIVE
)	REGULATION

This matter comes before the Public Service Commission of South Carolina (the "Commission") by way of the Application of Cypress Communications Operating Company, Inc. ("Cypress" or the "Company") requesting a Certificate of Public Convenience and Necessity authorizing it to provide resold interexchange telecommunications services within the State of South Carolina. Cypress requests that the Commission regulate Cypress' long distance business services, consumer card services, operator services and private line service offerings in accordance with the principles and procedures established for relaxed regulation in Orders Nos. 95-1734 and 96-55 in Docket No. 95-661-C, as modified by Order No. 2001-997 in Docket No. 2000-407-C (now known as "modified alternative regulation"). The Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 2002) and the Regulations of the Public Service Commission of South Carolina.

The Commission's Executive Director instructed Cypress to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the affected areas. The purpose of the Notice of Filing was to inform interested parties of Cypress' application and of the manner and time in which to file the appropriate pleadings for participation in the proceedings. Cypress complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. No Petitions to Intervene or protests regarding the application were received by the Commission.

A hearing was convened on January 9, 2003, at 10:30 a.m. in the Commission's Hearing Room at 101 Executive Center Drive, Columbia, South Carolina. The Honorable Mignon Clyburn, Chairman, presided. Cypress was represented by Scott Elliott, Esquire. Jocelyn G. Boyd, Staff Counsel, represented the Commission Staff.

Deena Snipes, Assistant Secretary and Director of Legal and Business Affairs, appeared and testified in support of the application. Ms. Snipes adopted the prefiled testimony of Gregory P. McGraw, President and Chief Operating Officer of the Company. Ms. Snipes described the nature of Cypress' proposed service offering within the State of South Carolina, and demonstrated the Company's financial, managerial, and technical ability to provide telecommunications services in South Carolina.

According to the record, Cypress was incorporated on April 6, 2000, under the laws of the State of Delaware. On July 11, 2002, Cypress was issued, by the South Carolina Secretary of State, a Certificate of Authority to transact business in the State of South Carolina.

In explaining the services which Cypress intends to offer, Ms. Snipes testified that Cypress proposes to operate as a reseller of intraLATA and interLATA intrastate telecommunications services to the public on a statewide basis. The Company also seeks authority to offer intraLATA direct-dialed services including (1+) service, flat rate service, 800 inbound service and travel cards. The Company will arrange for the traffic of underlying subscribers to be routed directly over the networks of Cypress' network providers. Cypress intends to utilize MCI WorldCom, AT&T, and Qwest as its underlying carriers. The testimony reveals that Cypress will choose its underlying carriers based upon the quality of service of the carrier properly certified by the Commission to provide such service.

Cypress is certified to provide local and interexchange telecommunications services in numerous states, including Florida, North Carolina, and Tennessee. The Company operates as an unregulated Shared Tenant Service provider in California, Georgia, Illinois, Texas, Washington, and Massachusetts. No such applications have been denied. In South Carolina, Cypress will market its services via direct sales by the Company's employees and independent sales agents. Further, the Company does not intend to utilize telemarketing.

Ms. Snipes opined Cypress has sufficient technical, financial, and managerial resources and the ability to provide the telecommunications services for which authority is sought. According to the testimony, Cypress' personnel represent a broad spectrum of business and technical disciplines, possessing many years of individual and aggregate telecommunications experience. According to the record, Charles B. McNamee, is the

Company's Director, Chief Executive Officer and Secretary. Mr. McNamee brings more than twenty-five years of senior telecom management experience focused on start-ups, turnarounds and operations for both private and publicly-held companies. Prior to Cypress, Mr. McNamee was Vice President of Network Operations with LGC Wireless, President, Business Development for U.S. RealTel, CEO of Tie Communications, and Founder and President, RealCom Office Communications, a national shared tenant services company. He has also held various senior management positions in sales, finance and operations at ROLM Corporation, an IBM Company. Mr. Gregory P. McGraw is the Company's Director, President, Chief Operating Officer, Treasurer, and Assistant Secretary. Mr. McGraw co-founded the telecom acquisition group that was successful in acquiring Cypress Communications, Inc., parent company of Cypress Communications Operating Company, Inc. in February 2002. Further, Mr. McGraw held executive roles for over twenty years focused on external growth strategies, turnarounds and new business development for Convergent Communications, Tie Communications, Telemate.Net Software, RealCom Office Communications and ROLM, an IBM Company. Other personnel at Cypress include Ross J. Mangano, Chairman of the Board; Salvatore Collura, Senior Vice President, Field Operations; Peter Gould, Director of Corporate Development; Dan Knafo, Senior Vice President, Network Operations; and Edgardo Vargas, Vice President and Controller.

Regarding the financial resources of the Company, the testimony reveals that Cypress will rely on financial support from U.S. RealTel, Inc. and Cypress Communications, Inc. The record reveals that Cypress is a wholly-owned subsidiary of

U.S. RealTel, Inc. and that Cypress holds all of U.S. RealTel's CLEC certifications. The updated financial statements that were filed as a late-filed exhibit show that U.S. RealTel, as of September 30, 2002, had current assets totaling \$15,734,000. Of the total amount of current assets, U.S. RealTel, Inc.'s cash and cash equivalents totaled \$2,117,000.

Cypress states a desire to have its long distance business services, including consumer card services, operator services, and private line services offerings regulated by modified alternative regulation. Cypress requested that all of its long distance business service offerings be regulated pursuant to the procedures described and set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. It is Cypress' intent by this request to have its long distance business services regulated in the same manner as this Commission has permitted for AT&T Communications of the Southern States. Alternative regulation has now been modified by this Commission through the re-imposition of rate caps with regard to certain "operator assisted calls" where a customer uses a local exchange carrier's calling card to complete calls from locations which have not selected that local exchange carrier as the toll provider. Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$0.35 related to the flat per-minute rate associated with these calls.

According to the Application and Ms. Snipe's testimony, Cypress seeks a waiver from the Commission Rules and Regulations. Cypress requests a waiver of 26 S.C. Code Regs. 103-610 (1976) so that it may maintain its records outside of South Carolina. Specifically, Cypress seeks to maintain its books and records at its headquarters office in Atlanta, Georgia. According to Ms. Snipes, Cypress has never had authority denied in

any state where it has applied for authority. Additionally, Cypress has never been the subject of an investigation by a state or federal regulatory body. According to the testimony, Cypress has not provided its services in South Carolina prior to receiving certification. Finally, Ms. Snipes stated that Cypress will abide by all the Commission's rules, regulations and Orders upon receiving certification to operate as a telecommunications provider in South Carolina.

After full consideration of the applicable law, Cypress' Application, and the evidence presented at the hearing, the Commission hereby issues its Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Cypress is a Delaware corporation and has been authorized to do business in the State of South Carolina by the Secretary of State.
2. Cypress is a provider of interexchange telecommunications services and wishes to provide its services in South Carolina.
3. Cypress has the managerial, technical, and financial resources to provide the services as described in its application.
4. The Commission finds that Cypress should be granted a waiver of 26 S.C. Code Regs. 103-610 requiring that reports and records be maintained within the State of South Carolina.
5. The Commission finds it appropriate for Cypress' interexchange telecommunications services to be regulated in accordance with procedures established in

Order Numbers 95-1734 and 96-55 in Docket Number 95-661-C, as modified by Order Number 2001-997 in Docket Number 2000-407-C.

CONCLUSIONS OF LAW

1. The Commission concludes that a Certificate of Public Convenience and Necessity should be, and hereby is, granted to Cypress to provide intrastate interLATA service and to originate and terminate toll traffic within the same LATA, as set forth herein, through its own facilities and through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), directory assistance, travel card service or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. The Commission adopts a rate design for the interexchange business services of Cypress consistent with the principles and procedures established for alternative regulation of long distance business service offerings set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C and modified by Order No. 2001-997. Following the modification of the alternative regulation by Commission Order No. 2001-997, this form of regulation is commonly referred to by the Commission, Staff, and others as “modified alternative regulation.”

Under the Commission approved modified alternative regulation, the business service offerings of Cypress, including consumer card services, operator services and private line services, are subject to a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. However, pursuant to Order No. 2001-997 issued in Docket No. 2000-407-C, this

Commission has modified the previously approved alternative regulation by the re-imposition of rate caps with regard to certain “operator-assisted calls” where a customer uses a local exchange carrier’s calling card to complete calls from locations which have not selected that local exchange carrier as the toll provider. Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$0.35 related to the flat per-minute rate associated with these calls. Under this relaxed regulatory scheme known as modified alternative regulation, tariff filings for business services shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an investigation of a particular tariff filing within the seven days, the tariff filing will then be suspended until further Order of the Commission. Any relaxation in the future reporting requirements that may be adopted for AT&T shall apply to Cypress also.

3. With regard to any residential interexchange service offerings of Cypress, the Commission adopts a rate design that includes only maximum rate levels for each tariff charge. The Commission has previously adopted a rate structure incorporating maximum rate levels. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

4. With regard to residential interexchange service rates, Cypress shall not adjust its residential interexchange service rates below the approved maximum levels without notice to the Commission and to the public. Cypress shall file its proposed rate changes, publish notice of such changes, and file affidavits of publication with the

Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances that do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for residential interexchange services reflected in the tariff which would be applicable to the general body of Cypress' subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 2002).

5. If it has not already done so by the date of issuance of this Order, Cypress shall file its revised interexchange tariffs and accompanying price lists within thirty (30) days of receipt of this Order. The revised tariffs shall be consistent with the findings of this Order, shall incorporate the changes suggested by the Staff and with which Cypress agreed, and shall be consistent with South Carolina law, including the Commission's Rules and Regulations.

6. Cypress is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers should be treated similarly to facilities-based interexchange carriers.

7. With regard to Cypress' interexchange services, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

8. Cypress shall resell the services of only those interexchange carriers or LECs authorized by this Commission to provide telecommunications services within the State of South Carolina. If Cypress changes underlying carriers, it shall notify the Commission in writing.

9. With regard to the origination and termination of toll calls within the same LATA, Cypress shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the FCC pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209). Specifically, Cypress shall comply with the imputation standard as adopted by Order No. 93-462 and more fully described in paragraph 4 of the Stipulation and Appendix B approved by Order No. 93-462.

10. Cypress shall file surveillance reports on a calendar or fiscal year basis with the Commission as required by Order No. 88-178 in Docket No. 87-483-C. The annual report and the gross receipt filings will necessitate the filing of intrastate information. Therefore, Cypress shall keep such financial records on an intrastate basis as needed to comply with the annual report and gross receipt filings. The form to be used in filing annual financial information with the Commission may be found at the Commission's website at www.psc.state.sc.us/forms/default.htm. The two-page form Cypress is required to use in which to file the required information is entitled "Annual Information on South Carolina Operations for Interexchange Companies and AOS." Be

advised that the Commission's annual report form requires the filing of intrastate revenues and intrastate expenses.

11. Cypress shall, in compliance with Commission regulations, designate and maintain authorized utility representatives who are prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, Cypress shall provide to the Commission in writing the names of the authorized representatives to be contacted in connection with general management duties as well as emergencies occurring during non-office hours.

Cypress shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The form Cypress is required to use by which to file the authorized utility representative information may be found at the Commission's website at www.psc.state.sc.us/forms/default.htm. This form is entitled "Authorized Utility Representative Information." Further, Cypress shall promptly notify the Commission in writing if any representatives are replaced.

Cypress shall also file with the Commission a copy of its general Bill Form as required by S.C. Code Regs. 103-612.2 and 103-622 (1976 and Supp. 2002).

12. Cypress shall conduct its business in compliance with Commission decisions and Orders, both past and future.

13. With regard to Cypress' request for a waiver of 26 S.C. Code Regs. 103-610 of the Commission's Rules and Regulations, Cypress is hereby granted a waiver of 26 S.C. Code Regs. 103-610. As to Cypress' request for a waiver of 26 S.C. Code Regs.

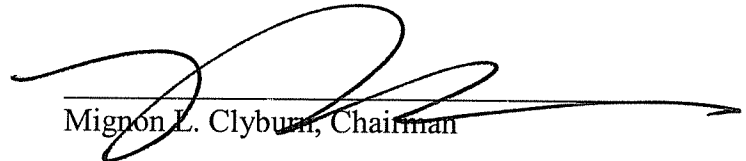
103-610 (1976) so that it may maintain its records outside of South Carolina, Cypress is granted this waiver and may maintain its books and records at its headquarters office in Atlanta, Georgia, on the condition that Cypress make these records be made available for examination by the Commission at reasonable hours.

14. Each telecommunications company certified in South Carolina is required to file annually the Intrastate State Universal Service Fund (USF) worksheet. This worksheet provides the Commission Staff with information required to determine each telecommunications company's liability to the State USF fund. The Intrastate USF worksheet is due to be filed annually no later than August 15th.

15. Cypress is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

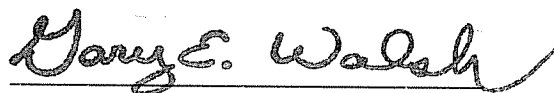
16. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Mignon L. Clyburn, Chairman

ATTEST:



Gary E. Walsh, Executive Director

(SEAL)